

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Amendment of Part 90 of the Commission's)
Rules to Facilitate Future Development)
of SMR Systems in the 800 MHz Frequency)
Band)

and)

Implementation of Section 309(j) of the)
Communications Act - Competitive Bidding)
800 MHz SMR)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

PP Docket No. 93-253

To: The Commission

**REPLY COMMENTS OF
SPECTRUM RESOURCES, INC.**

Spectrum Resources, Inc. ("SRI"), pursuant to Section 1.415(c) of the Federal Communications Commission's ("FCC" or "Commission") rules and regulations, hereby respectfully submits its reply comments to the comments which were filed in response to the Further Notice of Proposed Rule Making ("Further Notice") in the above-styled proceeding.¹

SRI submitted comments in this proceeding specifically to offer its proposals on (1) a method by which incumbent licensees could be relocated on a mandatory basis; and (2) the licensing of the non-contiguous 80 SMR channels and the 150 General Category channels. SRI continues to oppose the Commission's proposal that voluntary, rather than mandatory, relocation be adopted to clear the 200 contiguous

¹ The Reply Comment period was extended by Order (DA 95-67), adopted January 18, 1995, until March 1, 1995.

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channels of SMR channels. Without mandatory relocation of incumbent licensees (which do not successfully bid for the wide-area SMR licenses), the creation of the wide-area SMR licenses provides no relief from the current licensing process. Accordingly, not only would the Commission not achieve its goal of regularity parity, but it may cripple permanently a formerly competitive, thriving wireless communications industry.

In the reallocation of the 2 GHz band to permit the introduction of advanced technologies, particularly Personal Communications Services ("PCS"), the Commission originally determined that public safety incumbent microwave users in the 2 GHz would not be subject to mandatory relocation.² However, potential PCS licensees demonstrated that the spectrum would be unusable for the new PCS service if the potential interference from the public safety incumbent microwave users remained. The Commission, even in light of the potential adverse affect on the public safety interests, amended its rules to require that public safety incumbent microwave users would be subject to mandatory relocation³ -- although the schedule for involuntary relocation is longer than other incumbent microwave users.

Similarly, the 200 contiguous SMR channels reallocated for MTA-based wide-area SMR systems, may be rendered useless for the purpose of introducing advanced SMR technologies to compete with the cellular and broadband PCS services without

² See First Report and Order and Third Notice of Proposed Rule Making, ET Docket no. 92-9, 7 FCC Rcd 6886 (1992).

³ Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd. 1943 (1994).

some form of mandatory relocation. Voluntary relocation is what the present rules permit any licensee and with which licensees that intend to implement advanced-technology wide-area SMR systems have been struggling. This proceeding was initiated in order to provide relief to parties intending to implement wide-area SMR systems and facilitate the implementation of SMR systems which will provide competition to both cellular and broadband PCS systems. Without the adoption of mandatory relocation measures, the Commission should not amend its rules at all as no additional relief will be provided nor will regularity parity be achieved.

As discussed in SRI's comments, the difficulty with the concept of mandatory relocation (which results in a knee-jerk reaction by a number of incumbent licensees), is that the licensee which must vacate the spectrum is concerned that he/she will not be adequately compensated, either by obtaining comparable spectrum to continue an ongoing business or obtaining a fair, reasonable price for the business which the person built. A number of incumbent licensees would like some control over their destiny and wish to have an option to choose how they vacate their spectrum. SRI's proposal set forth in its comments would allow such options.

There are other incumbent licensees that believe that they have a property-right akin to a real property right to remain in a "condemned area" and not to be moved unless its less-than-reasonable demands are met. The Communications Act of 1934, as amended, however, clearly states that no licensee has a property right in any

spectrum licensed to the party.⁴ The relocation of incumbent licensees, therefore, is more akin to the condemnation action by the government for the public interest. SRI's proposal also provides these parties adequate compensation for relocation.

In that vein, SRI again requests that the Commission consider SRI's proposal for mandatory relocation. SRI's proposal provides simplicity and provides the incumbent licensees (which do not win wide-area licenses) with some assurance of how their businesses will be converted to alternative spectrum or what "price" to expect should they not wish to continue in operation. Should the Commission determine that some method of progressive mandatory relocation is appropriate for clearing the spectrum, SRI's options and method of calculation could still be utilized.

Regardless of how the Commission ultimately decides the relocation issue, SRI strongly urges the Commission to expedite its action in this proceeding. Since August 9, 1994, the Commission has not accepted most applications requesting modifications to existing licensed SMR facilities. During the past six-month period, the SMR industry has been adversely affected because of the lack of resolution of the issues presented in this proceeding. For example, licensees seeking financing to implement authorized wide-area systems have found investors less than enthusiastic because of the regulatory uncertainty created by the Commission's freeze on SMR applications. Should the Commission fail to take quick action in this proceeding, including re-opening the acceptance of applications for SMR frequencies, the SMR


⁴ See Sections 301, 304, 309(h) and 310(b) of the Communications Act of 1934, as amended.

industry may be unable to withstand the continued adverse affects of the regulatory uncertainty. This may result in SMR operators being unable to forge forward with the introduction and successful implementation of advanced-technology wide-area SMR systems. Without this additional wireless telecommunications option, there may be inadequate competition in a marketplace which may result in a detrimental impact to the consumer.

Spectrum Resources, Inc., therefore, respectfully requests that the Commission take action in a manner consistent with Spectrum Resources, Inc.'s comments and reply comments submitted in this proceeding.

RESPECTFULLY SUBMITTED,

SPECTRUM RESOURCES, INC.

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